IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 152/2005
WITH
CRIMINAL APPEAL (STAMP NO. 1450/2005).

S T A T E
Through Public Prosecutor,
High Court of Bombay,
Panaji, Goa. .... Petitioner.

Versus

1. Shri Jeronio Fernandes
   (expired).
2. Shri Filu Fernandes
3. Smt. Catarin Fernandes
4. Shri Francisco D'Cunha,
   all residing at Sallimadem,
   Cuncolim, Salcete, Goa.
5. Smt. Myolett Pereira,
   r/o Comba, Paricotto,
   Cuncolim, Salcete, Goa.
6. Shri Saude D'Souza.
7. Smt. Mercy D'Souza,
   both residing at Sallimadem,
   Cuncolim, Salcete, Goa.
8. Shri Advin Vaz,
   r/o uelancotto, Cuncolim,
   Salcete, Goa.
9. Smt. Veronica Fernandes,
   r/o Sallimadem, Cuncolim,
   Salcete, Goa.
10. Shri Oswald Fernandes,
    r/o Mokim, Cuncolim,
    Salcete, Goa.
11. Shri Daniel Fernandes,
    r/o Comba, Paricotto,
    Cuncolim, Salcete, Goa.
12. Smt. Jenis Fernandes,
    r/o Mokim, Cuncolim,
    Salcete, Goa.

13. Smt. Milagrina Vaz
r/o Comba, Paricotto, Cuncolim,
Salcete, Goa.
14. Smt. Celina Pinto
r/o Dandora, Cuncolim,
Salcete, Goa.
15. Miss Bena D'Costa,
r/o Comba, Paricotto,
Cuncolim, Salcete, Goa.
16. Shri Nicolaus Vaz,
r/o Gualancotto, Cuncolim,
Salcete, Goa.
17. Shri Vizbi Vaz,
r/o Gualancorvo, Cuncolim,
Salcete, Goa.
18. Shri Vishal D'Costa,
r/o Comba, Paricotto,
Cuncolim, Salcete, Goa.
19. Smt Victoria D'Costa,
r/o Sallimadem, Cuncolim,
Salcete, Goa.
20. Smt. Maria Leitao,
r/o Sallimadem, Cuncolim,
Salcete, Goa.
21. Shri Phillip Fernandes,
r/o Paricotto, Cuncolim,
Salcete, Goa.
22. Smt. Caitani Fernandes,
r/o Benaulim, Salcete, Goa.
23. Shri Nazario Fernandes,
r/o Sallimadem, Cuncolim,
Salcete, Goa.
24. Shri Jerry Pereira,
r/o Paricotto, Cuncolim,
Salcete, Goa.
25. Smt. Sereena Coutinho,
r/o Paricotto, Cuncolim,
Salcete, Goa.
26. Smt. Lourence Fernandes,
r/o Mokim, Cuncolim,
Salcete, Goa.
27. Smt. Olfira Barbosa,
r/o Dandora, Cuncolim,
Salcete, Goa.

28. Shri Santosh Dessai,
r/o Dandora, Cuncolim,
Salcete, Goa.
29. Shri Xavier alias Kalia Fernandes,
r/o Sallimadem, Cuncolim,
Salcete, Goa.
30. Smt. Victoria Fernandes,
r/o Mokim, Cuncolim,
Salcete, Goa.
31. Smt. Antonieta Fernandes,
r/o Mokim, Cuncolim,
Salcete, Goa.
32. Smt. Martha Fernandes,
r/o Sallimadem, Cuncolim,
Salcete, Goa.
33. Smt. Gorette Dias
r/o Dandora, Cuncolim,
Salcete, Goa
34. Smt. Luiza Fernandes,
r/o Dandora, Cuncolim,
Salcete, Goa.
35.Shri Terence Fernandes,
r/o Comba, Paricotto,
Cuncolim, Salcete, Goa.
36.Smt. Meshan Fernandes,
r/o Comba, Paricotto, Cuncolim,
Salcete, Goa.
37. Smt. Digna Dias,
r/o Sallimadem, Cuncolim,
Salcete, Goa.
38. Shri Nazario D'Souza,
r/o Sallimadem, Cuncolim,
Salcete, Goa.
39. Smt. Emelia Vaz
(Expired). .... Respondents
(Orig. Accused)

Shri S.N. Sardessai, Public Prosecutor for the State/Applicant.

CORAM: V. M. KANADE, J.

DATE: 4th AUGUST, 2005.

J U D G M E N T:

The State has filed this Criminal Misc. Application for special leave to file appeal challenging the Judgment and Order passed by the J.M.F.C. at Margao in Criminal case No. 84/S/01/D. By the said Judgment and Order dated 28.12.2004 the trial Court acquitted the respondents in respect of offences punishable under Sections 147, 148, 332 r/w S.149 of the Indian Penal Code and Section 3 of the Prevention from Destruction of Public Premises Act (hereinafter referred to as the P.D.P.P. Act).

2. Brief facts are as under :

The prosecution case is that on 16.12.99 at about 19.30 hrs. to 11.15 hrs. the accused/respondents No.1 to 39 along with 158 to 163 others formed an unlawful assembly near the Cuncolim Police Station premises and pelted stones over the Police Station building, as a result of which three constables were injured and the property of the Police Station was also damaged. Accordingly a complaint was registered and thereafter charge sheet was filed under Sections 143, 147, 148, 332 r/w S.149 of I.P.C. and Section 3 of the P.D.P.P. Act against the respondents. The trial Court however acquitted all the accused after giving them the benefit of doubt. The State has preferred this appeal against acquittal and the said Judgment and Order passed by the Judicial Magistrate F.C. at Margao.

3. I have heard Shri Sardessai, the learned P.P. on behalf of the State. He has taken me through the judgment and order of the trial Court as also the oral and documentary evidence which is brought on record by the prosecution. He has submitted that the learned Magistrate had clearly erred in discarding the evidence of the eye witnesses who were injured in the incident without giving any cogent reasons for disbelieving their testimony. He submitted that the trial Court had clearly erred in disbelieving their testimony on the ground that they were police officers and that independent witnesses had not been examined by the prosecution. He submitted that the incident in question had been proved beyond reasonable doubt by the prosecution. He further submitted that there was sufficient evidence on record to indicate that the property of the Police Station was damaged by the respondents who had taken law into their own hands. He therefore submitted that it was a very serious offence which was committed by the respondents and the learned Magistrate had committed manifest error in disbelieving the oral testimony of the injured persons. He submitted that the medical evidence also clearly supported the testimony which was given by the Police officers who were injured in the incident. Therefore there is no reason to discard the evidence of these witnesses particularly when each of them had named the respondents/accused who had participated in the commission of the said offence. He submitted that the trial Court had clearly erred in holding that there was no direct evidence against the

accused. The prosecution had brought on record the evidence of the eye witnesses. He submitted that therefore the view taken by the learned Magistrate was clearly unreasonable and was liable to be set aside.

4. In the present case a charge has been framed against 39 accused, out of which accused No.1 and 30 have already expired and accused Nos.2, 3, 4 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, 28, 32, 33 and 35 were already discharged by the Magistrate.

5. The prosecution case is that in the village Cuncolim an incident had taken place in which one Jesico had assaulted one lady Ms. Flora Pinto. After the said incident a group of about 50 persons majority of which were ladies, were demanding the arrest of the said Jesico. After some time this group of 50 persons turned into a mob of 300 people. By that time the police had already arrested Jesico and put him behind bars in the Police Station Lockup. However, the mob started demanding the custody of the said Jesico and they tried to forcibly enter the chamber of P.S.I. of Cuncolim Police Station. The P.S.I. and S.D.P.O. requested the mob to disperse and told them that action would be taken against the said Jesico. However, the crowd became unruly and started pelting stones and empty bottles on the Police Station. Thereafter the police resorted to lathi charge and thereafter the crowd dispersed. The statements of the Police officers were recorded.

They were taken to hospital where they were given treatment and they were discharged. A charge sheet was filed against the accused. The accused pleaded not guilty to the said charge. Some of the accused were discharged on the ground that there was no evidence against them. The police examined 11 witnesses, out of which 9 witnesses were police personnel and P.W.1 was a panch witness and P.W.7 was the medical officer who had issued the medical certificate.

6. P.W.1 Oscar Martins was examined as a panch witness who has prepared the scene of offence panchanama in which he has noticed flower plots at the entrance of the police station were damaged and broken, one notice board had fallen on the floor. He stated that there were stones on different sizes and pieces of glass on the floor. Several pairs of chappals were also found in the said police station. He further stated two wheelers parked in the compound had fallen on the right side of the Police Station. He also noted that four used tea gas shell caps were found in the compound. From the evidence of this witness, it can be seen that the property in the Police Station was damaged and the flower pots which were kept in the veranda were also broken. There was damage to the switch box and one window pane was broken. Prosecution thereafter has examined Premanand Faldesai P.W.2 a Police Constable who at that time was working in Cuncolim Police Station on the date of the incident.

He has stated that a group of 50 persons had entered the Police Station. He further stated that after sometime the said group of 50 persons increased to about 300 persons. He thereafter stated that the initial dispute was between Ms. Flora and Jesico and that on the complaint of Flora, the said Jesico was arrested. However the mob entered the chamber of the P.S.I. And they were demanding that the custody of Jesico be handed over to them. He has stated that P.S.I. and S.D.P.O. had requested the mob not to take law into their hands and thereafter the mob started pelting stones and empty bottles on the Police Station. Thereafter the S.D.P. Had ordered that tear gas should be fired against the mob. He has stated that he sustained injury to his left leg. Similarly one Juvatkar, Shobha Kankonkar and Madhavi Kankonkar also suffered injuries. He has stated that the mob was led by Mrs. Sharan, Mrs. Luiza Fernandes, Michen, Jerry, Caitania and done Jerson (since expired). Similarly evidence has been given by Anand Salunke. He has however named Edwin, Luisa, Mercian as persons who were present among the mob. P.W.4 Madhu Dessai who was also Head Constable attached to the Police Station has given similar evidence and he has stated that he knew Mercian, Luiza and Edwin among the accused by name. P.W.5 Mariano Rodrigues also has given similar evidence. He was Police Constable attached to the Cuncolim Police Station on the date of the incident. He has stated that he knew accused Jerry, Digna, Michel, Jerome and that

they were present in the room. P.W.6 Shobha Canconkar was the L.P.C. attached to the Police Station. She has also reiterated the facts given by the other witnesses. She has stated that the accused who were present in the Court today were the persons among the said group who were present on the day of the incident in the premises of the Police Station. P.W.7 Vandana Dessai is the medical officer who examined the injured police officers and has given a certificate that the injuries which were caused were simple in nature. P.W.8 Bosco George is the Superintendent of Police who was attached to the said Police Station on the day of the incident. He has also reiterated the same facts which have been stated by the other witnesses.. He has not stated the names of the persons who had participated in the said assault nor has he identified the accused or has stated the role played by each of the accused. P.W.9 Mukund Dessai is the A.S.I. Attached to the said Police Station. He has also given very much the same account which have been given by the other witnesses. He has however not named any of the accused. P.W.10 Somnath Gaude who was attached to the said Police Station as A.S.I. at the relevant time has stated that the investigation was handed over to him by P.S.I. Wilson D'Souza and that he had recorded the statement of Dy.S.P. Bosco George. P.W.11 is the Police Inspector who conducted the investigation and he was attached to the Police Station. From the evidence of these witnesses, it can be seen that the prosecution has proved beyond

reasonable doubt that the incident in question had taken place on 16.12.99 and that the mob of about 300 people had gathered near the Police Station and had demanded the custody of one Jesico and had tried to take law into their own hands and thereafter had pelted stones on the Police Station and damaged the property. Four constables were injured. However, from the evidence of all these witnesses, it has not come on record as to who was responsible for the said damage which had been caused to the Police Station though some of the witnesses have stated that they recognized some of the accused, they have not mentioned the exact role played by these accused. They have merely stated that the accused who have been named by them were present in the mob. It cannot be said that there is direct evidence to show that the accused/respondents herein were responsible for the damage which was caused or that they had assaulted the police personnel. From this evidence it cannot be said that they shared the common intention of those persons who had pelted stones on the Police Station. In the present case, the admitted position is that one lady was assaulted by one Jesico and thereafter a group of 50 persons had made a demand for the arrest of the said Jesico. They thereafter started shouting slogans after which the mob increased from 50 to 300. In an incident like this, it is possible that number of persons may have gathered there to witness the incident and merely because they have been seen in the mob it cannot be said that

they were the persons who had stoned the Police Station. Therefore the mere presence of these accused is not sufficient to come to the conclusion that they had participated in the commission of the said offence.

7. Similarly, the injuries which were found on the person of the four Police Constables also are simple in nature and it cannot be said that they could have been caused as a result of assault by stones by a mob of 300 persons.

8. Taking into consideration all these facts and circumstances, in my view the trial Court has correctly appreciated the evidence on record and has given the benefit of doubt to the accused. Most of the accused are women, some of them have expired during the pendency of the trial. From the perusal of S.313 statement, it can be seen that most of the ladies are elderly ladies who are housewives. The trial Court in my view was fully justified in coming to the conclusion that the prosecution has not proved its case beyond reasonable doubt.

9. It is settled position in law that the High Court, while exercising its jurisdiction under Section 378 Cr.P.C. should not substitute its own view for the view taken by the trial Court and in case two views are possible, then ordinarily the view taken by the trial Court should not be disturbed. I

therefore do not see any reason to interfere with the said order passed by the trial Court. Under the circumstances, the submissions made by the learned P.P. cannot be accepted.

10. In my view this is not a fit case for grant of leave for filing special leave. Leave therefore is refused. Criminal Appeal is dismissed.

V. M. KANADE, J.

sl.